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5. Landlord and Tenant (§ 199½*)—Lease—Assignment—Contract—Breach.—Plaintiffs, being lessees of a quarry on a railroad right of way, assigned the same to defendants, and shortly thereafter the railroad company refused to permit further operations, unless defendants paid the wages of a watchman while work was being done in the quarry. This defendants refused to do, and thereupon ceased operating the quarry, and alleged such fact as a breach of plaintiff's contract in defense of an action for rent. Held, that defendant's rights as to the operation of the quarry, with or without a watchman, depended on the construction of the written contract between plaintiffs and the railroad company, and not on the contention of either party with reference thereto, and hence the railroad company's claim constituted no defense to defendant's liability for rent.

[Ed. Note.—For other cases, see Landlord and Tenant, Dec. Dig. § 199½.* 9 Va.-W. Va. Enc. Dig. 193.]

Error to Law and Chancery Court of City of Roanoke.

Action by one Cox and others against McGhee & Co. Judgment for plaintiffs, and defendant brings error. Affirmed.

Hart & Hart, of Roanoke, for plaintiff in error.

Jackson & Henson, of Roanoke, and J. H. Stuart, of Tazewell, for defendants in error.

NEWBERRY *v.* WATTS.

Sept. 7, 1914.

[82 S. E. 703.]

1. Trial (§ 154*)—Demurrer to Evidence—General Demurrer.—That a demurrer to the evidence was general and did not specifically state the ground on which it was based, as required by Acts 1912, p. 75, c. 42, was not a fatal defect, where there was but one controverted question in the case, which was plainly defined to both parties.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 351, 353; Dec. Dig. § 154.* 4 Va.-W. Va. Enc. Dig. 519, 547.]

2. Assignments (§ 134*)—Payment to Assignor—Notice—Burden of Proof.—On an issue as to the validity of alleged payments made by the obligor of a bond to the obligee after the bond had been assigned, the burden is on the plaintiff to prove that the obligor had notice of the assignment when the payments were made.

[Ed. Note.—For other cases, see Assignments, Cent. Dig. §§ 229-231; Dec. Dig. § 134.* 1 Va.-W. Va. Enc. Dig. 777.]

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig, Key No. Series & Rep'r Indexes.

3. Trial (§ 156*)—Demurrer to Evidence—Credibility of Witnesses—Withdrawal of Demurrant's Evidence.—On plaintiff's demurrer to defendant's evidence, the court is bound to consider all the evidence in conflict with that of the defendant as withdrawn, the credibility of the defendant's witnesses admitted, and all the facts admitted which defendant's evidence, thus considered, tended to prove or which might be reasonably inferred from the whole evidence, direct and circumstantial.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 354-356; Dec. Dig. § 156.* 4 Va.-W. Va. Enc. Dig. 522-527.]

4. Trial (§ 105*)—Reception of Evidence—Evidence Admitted without Objection.—Where an inadmissible document, objectionable as hearsay, was admitted in evidence without objection, it should be considered as admissible.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 260-266; Dec. Dig. § 105.* 1 Va.-W. Va. Enc. Dig. 560.]

5. Assignments (§ 137*)—Notice—Evidence—Question for Jury.—In an action on a bond by an assignee, evidence held to require submission to the jury of the question whether the obligor had notice of the assignment prior to making certain disputed payments to the obligee.

[Ed. Note.—For other cases, see Assignments, Cent. Dig. § 234; Dec. Dig. § 137.* 1 Va.-W. Va. Enc. Dig. 797.]

Error to Circuit Court, Tazewell County.

Action by Mrs. F. G. S. Watts, as assignee of John G. Watts, against Harman Newberry. Judgment for plaintiff, and defendant brings error. Reversed and rendered.

S. M. B. Coulling, of Tazewell, *S. W. Williams*, of Wytheville, *S. W. Williams, Jr.*, of Bland, and *R. B. Davis* of Petersburg, for plaintiff in error.

Chapman & Gillespie, of Tazewell, and *Jackson & Henson*, of Roanoke, for defendant in error.

GILLESPIE et al. v. DAVIS et al.

Sept. 7, 1914.

[82 S. E. 705.]

1. Reformation of Instruments (§ 43*)—Deed—Mistake—Burden of Proof.—In a suit to reform a deed for a mistake of the surveyor in surveying the land or of the scrivener in drafting the deed, the burden is on complainants to establish the mistake by clear and con-

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.